

BEFORE THE TRIAL CHAMBER
SPECIAL TRIBUNAL FOR LEBANON

Case No: STL-11-01

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis

Date: 26 January 2018

Filing Party: Defence Counsel - Oneissi

Original language: English

Classification: Public

PROSECUTOR

v.

**SALIM JAMIL AYYASH
HASSAN HABIB MERHI
HUSSEIN HASSAN ONEISSI
ASSAD HASSAN SABRA**

Oneissi Defence Motion for the Admission of Four Documents Used With PRH707

Office of the Prosecutor:

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Mr Mohamed Aouini, Ms Dorothée Le Fraper du
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Legal Representatives of

Participating Victims:

Mr Peter Haynes, Mr Mohammad F. Mattar
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Mr David Young, Mr Geoffrey Roberts &
Ms Sarah Bafadhel



I. Introduction

1. Pursuant to Rule 149(C) of the STL Rules of Procedure and Evidence (the “Rules”), the Defence for Hussein Hassan Oneissi (the “Defence”) hereby requests the Trial Chamber to admit four documents used during the cross-examination of PRH707, the representative of Lebanese telecommunications service provider Alfa.

2. The four documents – namely, exhibits 4D00261 MFI, 4D00262 MFI, and 4D00263 MFI; and a document entitled “Differences in azimuths between Security Main and Cell ID” – are sufficiently relevant and probative for admission into evidence. Exhibits 4D00261 MFI and 4D00262 MFI comprise tables that list cells that are missing from Annex 13 and Annex 14(2) of PRH707’s Witness Statement of 11 November 2015. Exhibit 4D00263 MFI is an extract of an “incident log” provided to the Prosecution by Alfa. The document entitled “Differences in azimuths between Security Main and Cell ID” lists differences in azimuth values provided in two Alfa spreadsheets, entitled “Security Main” and “Cell ID” which are currently in evidence. The four documents were shown to PRH707, who was asked and answered questions in relation to them.

II. Submissions

A. The Exhibits are sufficiently relevant and probative for admission into evidence

3. Pursuant to Rule 149(C), the Trial Chamber “may admit any relevant evidence which it deems to have probative value”. The Trial Chamber has previously held that only *prima facie* reliability and probative value are required at the admissibility stage, and that probative value, in this sense, is distinct from the weight that the Trial Chamber may ultimately give to a document.¹

1. Exhibits 4D00261 MFI and 4D00262 MFI

4. Exhibits 4D00261 MFI and 4D00262 MFI compile the results of a comparison undertaken between two Alfa business records – namely, Annex 13 and Annex 14(2) – that were annexed to PRH707’s witness statement of 11 November 2015.² Specifically, Exhibit

¹ See ex., STL, *Prosecutor v. Ayyash et al.*, Case No. STL-11-01/T/TC, Decision on Four Prosecution Motions on Call Sequence Tables Related to Salim Jamil Ayyash, Hassan Habib Merhi, Assad Hassan Sabra, Mustafa Amine Badreddine and Five Witness Statements, 31 October 2016, para. 72.

² See, P01192.

4D00261 MFI lists cells that are missing from Annex 13 but are present in Annex 14(2),³ while Exhibit 4D00262 MFI lists cells that are missing from Annex 14(2) but present in Annex 13.

5. Annex 13 and 14(2) are the primary and secondary sources of Alfa telecommunications data used in the Prosecution's Electronic Presentation of Evidence ("EPE"), and have been admitted into evidence.⁴

6. As stated above, PRH707 was asked, and answered, questions in relation to the differences between Annexes 13 and 14(2).⁵ Exhibits 4D00261 MFI and 4D00262 MFI are therefore relevant to the evidence of PRH707, and probative of the reliability of Annex 13 and 14(2), both of which documents the Prosecution relies upon in the EPE. The admission of Exhibits 4D00261 MFI and 4D00262 MFI into the evidentiary record, as demonstrative evidence, is necessary to understand the full context of the cross-examination of PRH707.

2. Exhibit 4D00263 MFI

7. Exhibit 4D00263 MFI is an extract of a business record provided by Alfa: an excel spreadsheet entitled "Trouble_Data.xlsx", which is a log of incidents that have occurred in relation to the Alfa network. "Trouble_Data.xlsx" was disclosed to the Defence in the Z-Drive on 7 September 2015.⁶ According to the Prosecution, "Trouble_Data.xlsx" was provided by Alfa to the Prosecution in response to Prosecution RFA 2015/103, which was a request for "network logs".⁷

8. PRH707 was asked, and answered, a number of questions in relation to this document. He was taken to incidents that occurred across the Alfa network on 14 February 2005, including a power failure at the COLA station (a fundamentally important cell station in the Prosecution case against Mr Oneissi);⁸ abnormalities that occurred at the level of the MSCs as a result of over-congestion following the explosion;⁹ and to cells directly affected by the explosion, as well as the flow-on effect of these incidents on their neighbouring cells and on

³ Eleven cell sites were erroneously included in the list, at #1-9, 11-12, and 26; see, where Defence Counsel corrected the Exhibit on the record, 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 35-37.

⁴ See, P01120; Annex 13 and 14(2) have been assigned the Exhibit Numbers, P778 and P775, respectively.

⁵ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 12-15.

⁶ The Surrogate Document was disclosed in Batch 2317 and has ERN D0471964-D0471964.

⁷ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 91-92.

⁸ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 25-30.

⁹ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 46-56.

Alfa network coverage generally.¹⁰ In addition, the witness was unable to explain the absence from the log of the PHOENECIA cell, despite being aware that PHOENECIA was directly affected by the explosion.¹¹

9. The excel spreadsheet entitled “Trouble_Data.xlsx” is a business record of Alfa. The Trial Chamber has previously held that “business records, by the fact alone that they have been produced in the normal course of business of the relevant organisation or workplace, possess the necessary indicia of reliability for admission into evidence”.¹²

10. The witness recognised the information in 4D00263 MFI, stating that it was “clear [...] about what it deals with” – namely, “modifications or the repairs were done regarding some of the stations”.¹³ While he himself has not dealt specifically with such documents, which he described as “tables or logs regarding incidents”, he stated that there was a specific department within Alfa that dealt with these types of logs.¹⁴ The Trial Chamber has previously held that the mere fact that PRH707 “lacked personal knowledge of some of the evidence, does not of itself render the documents *prima facie* unreliable”.¹⁵

11. Exhibit 4D00263 MFI is relevant to the evidence of PRH707 and the reliability of the Alfa telecommunications data, as well as the Prosecution’s cell site analysis as a whole. When read together with PRH707’s answers, the Exhibit 4D00263 MFI is probative of the disruptive effect, both direct and indirect, of the 14 February 2005 explosion on the Alfa network.

3. “Differences in azimuths between Security Main and Cell ID”

12. The document “Differences in azimuths between Security Main and Cell ID”¹⁶ (the “Document”) is a comparison of the azimuth values that appear on two Alfa business records: a spreadsheet entitled “Security Main” (received on 27 July 2010), and a spreadsheet entitled

¹⁰ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 58-62.

¹¹ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 58-59.

¹² See, STL, *Prosecutor v Ayyash et al.*, Case No. STL-11-01/T/TC, Written Reasons for Admitting Witness PRH707’s Statements and Annexes into Evidence, 10 October 2016 (“Written Reasons for Admitting PRH707 Evidence”), para. 46.

¹³ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, p. 24, lines 4-11.

¹⁴ See, 20160725_STL-11-01_T_T281_OFF_PUB_EN, p. 25, lines 4-10.

¹⁵ See, Written Reasons for Admitting PRH707 Evidence, para. 47.

¹⁶ As the original document shown to PRH707 had been given an incorrect ERN (1DT4-1263-1DT4-2364), a new version of the document has been prepared (see Annex A, with ERN 1DT4-2456-1DT4-2457); in this corrected version, three cell sites that were erroneously included in the original document have also been crossed out.

“Cell ID” (received on 22 March 2010).¹⁷ Both “Security Main” and “Cell ID” are in evidence, and have been assigned exhibit numbers P00780 and P01183, respectively.

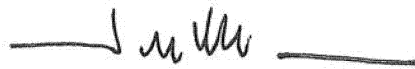
13. As demonstrated by the Document, different azimuth values are provided for 39 cells,¹⁸ despite the spreadsheets having been provided to the Prosecution a mere four months apart. PRH707 was asked questions in relation to this document, and was unable to explain the differences, stating that “there might be differences depending on which database the engineer used”.¹⁹

14. The Document is relevant to the evidence of PRH707 and, when read together with his answers, is probative of issues that go to the reliability of the spreadsheets, as well as to the record-keeping practices at Alfa. In the past, the Trial Chamber has admitted a document that lists discrepancies in azimuth values provided for certain cells, across different sources of Alfa data.²⁰

III. Relief Requested

15. For the above reasons, the Defence for Hussein Hassan Oneissi requests that the Trial Chamber fully admit Exhibit 4D00263 MFI and “Differences in azimuths between Security Main and Cell ID” (at Annex A to this Motion); and admit as demonstrative evidence Exhibits 4D00261 MFI and 4D00262 MFI.

Submitted this 26th Day of January 2018



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¹⁷ See, STL, *Prosecutor v Ayyash et al.*, STL-11-01/T/TC, Prosecution Motion for the Admission of Cell Site Evidence, 15 June 2015, Annex A – Proposed Rule 154 Cell Site Evidence Exhibits, at #7, #16.

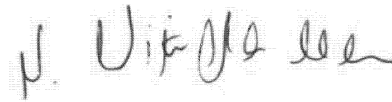
¹⁸ See above, footnote 16.

¹⁹ 20160725_STL-11-01_T_T281_OFF_PUB_EN, pp 16-18.

²⁰ See, P00776, found admissible in Written Reasons for Admitting PRH707 Evidence, paras 162-168.



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